

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**DERLON K CRAIN #91405**

**CASE NO. 2:19-CV-01033 SEC P**

**VERSUS**

**JUDGE JAMES D. CAIN, JR.**

**TONY MANCUSO, ET AL.**

**MAGISTRATE JUDGE KAY**

**MEMORANDUM ORDER**

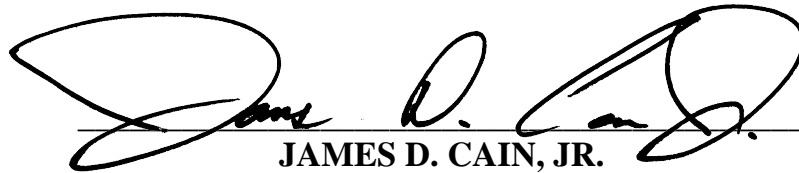
Before the court are a Memorandum [doc. 20] and Appeal [doc. 21] filed by pro se plaintiff Derlon K. Crain. The appeal relates to Magistrate Judge Kathleen Kay's order striking Crain's case for failure to pay his filing fee [doc. 17], after his *in forma pauperis* status was revoked due to dismissal of previous actions under 28 U.S.C. § 1915(e)(2)(B). Doc. 12.

A magistrate judge hears and determines pretrial matters “not dispositive of a party's claim or defense.” 28 U.S.C. § 636(b)(1)(A). A magistrate judge's ruling on a non-dispositive motion may only be overturned if it is clearly erroneous or contrary to law. *Moore v. Ford Motor Co.*, 755 F.3d 802, 806 (5th Cir. 2014) (citing Fed. R. Civ. 72(a)). Crain appeals the magistrate judge's order to strike his case, asserting that she erred by not holding that his case met the exception under 28 U.S.C. § 1915(g) which allows a litigant to proceed *in forma pauperis* despite prior dismissals if he “is under imminent danger of serious physical injury.”

Crain asserts that he qualifies for this exception because his suit relates to his alleged exposure to tuberculosis at Calcasieu Correctional Center. Doc. 20. That alleged exposure

occurred several years ago and was the subject of another civil rights suit filed by Crain. *See Crain v. Mancuso*, No. 2:15-cv-2290 (W.D. La. Nov. 9, 2018). Crain is presently incarcerated in Bossier Parish, Louisiana, though he continues to complain of events that occurred at Calcasieu Correctional Center. His allegations do not support a finding of “imminent danger.” Accordingly, he shows no error to the magistrate judge’s ruling and the appeal [doc. 21] must be **DENIED**.

**THUS DONE** in Chambers on this 3rd day of December, 2019.



**JAMES D. CAIN, JR.**  
**UNITED STATES DISTRICT JUDGE**